

Summary of Legislation for the Licensing Bureaus
October 15, 2004

The two licensing bureaus (Health Care and Business and Occupational) have two pieces of joint legislation. The first is a model act for licensing, and the second is a combined housekeeping bill to clean up existing outdated, erroneous or cumbersome statutes. This document will summarize the legislation and provide an overview of the intent. Copies of the draft bills may be found at discoveringmontana.com/dli/bsd/legislation.asp. The Department welcomes your input on these bills. Direct your questions or comments to Lisa Addington, 841-2303, (liaddington@state.mt.us) or Jill Caldwell, 841-2302, (jcaldwell@state.mt.us).

The Model Act

LC0194, Revise professional and occupational licensing laws, is an attempt to clarify duties of the Department of Labor and Industry and the Boards and to streamline and standardize licensure processes. This bill is a direct result of House Joint Resolution 20 (HJR20) from the last Legislative Session (2003). HJR20 called for a performance audit of the Department's licensing boards and programs. The Legislative Audit Division completed the audit in May 2004. Five aspects of professional and occupational licensing were examined:

- Licensing fees and board funds
- Board disciplinary activities
- Department administrative procedures
- Public and professional representation on licensing boards
- Education and experience requirements applied as a condition of licensure

The audit findings are available on the State's website:
<http://discoveringmontana.com/dli/bsd/license/audit.asp>.

Broadly, the findings produced the following recommendations:

- Where appropriate, the Department should seek standardization among licensure boards and programs.
- The Department should update and revise administrative policies and procedures.
- The Department should develop and compile reporting standards for management information.
- The Department should seek authority to set uniform administrative service fees that are commensurate with the cost of services.
- The licensing boards should delegate responsibility for review and approval of routine applications to boards staff.
- Renewal dates should be evaluated and redistributed where necessary to manage workflow of the bureaus.
- Continual renewal cycles should be eliminated in favor of fixed-date renewals.
- Documentary verification of continuing education hours should be performed on a random audit basis and not on every renewal applicant.
- The Department should develop model administrative rules to increase the consistency in the disciplinary process.

- The Department should develop standardized procedures for compliance inspections.

With these recommendations in mind, the Department has proposed the Model Act for Licensure. The Act will clarify the duties of the Departments and duties of the boards. The Act also clarifies that the following duties are the Department's:

- establishing and providing all administrative, legal and clerical services to the boards;
- processing applications, issuing routine licenses, renewing licenses;
- establishing the qualifications of applicants to take the licensure examination for programs without a board;
- determining the standards, contents, types and methods of examinations required for licensure or re-instatement, examine applicants, require continuing education for licensure or renewal of licensure, so long as the continuing education is not a precondition of renewal, and no more than 20% of renewed licensees are subjected to an audit of their continuing education for programs without a board;
- setting administrative fees, depositing funds and monitoring boards' and programs' cash balances;
- preparing agendas;
- standardizing policies and procedures and streamlining administrative processes;
- contracting for or grading examinations;
- investigating complaints or performing inspections; and
- hiring, supervising, establishing qualifications for and terminating staff.

The Act assigns the following duties to the boards:

- set and enforce standards and rules governing the licensing, certification, registration and conduct of the members of the particular profession or occupation;
- establish the qualifications of applicants to take the licensure examination;
- determine the standards, contents, types and methods of examination required for licensure or re-instatement, examine applicants, require continuing education for licensure or renewal of licensure, so long as the continuing education is not a precondition of renewal, and no more than 20% of renewed licensees are subjected to an audit of their continuing education;
- sit in judgment in hearings for suspension, revocation or denial of a license;
- suspend, revoke or deny a license after a hearing;
- pay its pro rata share of the Department's expenses;
- consult with the Department before initiating a program expansion, under existing legislation to determine the availability of adequate resources; and
- issue subpoenas for information needed for the board's work.

The Act determines that a license is lapsed if not renewed by the renewal date set by the Department. Once lapsed, the license may be reactivated within 45 days by submitting the completed renewal form, paying a renewal fee and a late penalty fee, and complying with renewal requirements. A licensee practicing during this time is not considered to be

practicing without a license. If the licensee allows more than 45 days after the renewal date to pass, the license is considered expired. Once the license has expired, the licensee may reactivate the license within two years by submitting a renewal form, paying the renewal and late penalty fee and complying with renewal requirements. If the licensee practices during this time, the licensee is considered to be practicing without a license.

The Act defines the following new terms:

- Administrative fee means a fee established by the Department to cover the cost of routine processing services. These fees are those charged for duplicate licenses, verifications, address changes, late penalty fees, etc.
- Board fee means a fee established by the board to cover the cost of program areas and any other board specific and legislatively mandated fees. These fees are licensure fees, examination fees and renewal fees.

The Combined Housekeeping Bill

LC0193, Clarify responsibility of boards and department of labor and industry, also responds to several issues described in the legislative audit. The bill:

- Eliminates board statutes requiring citizenship for either board members or licensees. Adds two members each to the Boards of Sanitarians, Athletics and Public Accountants. The limited number of members on these boards has hindered the Boards' ability to have adequate membership on screening and adjudication panels.
- Exempts a physician or dentist licensed in another state and employed by the Federal government from the licensure requirement to practice.
- Recognizes the Board of Nursing's Nurse Midwives' autonomy and eliminates the need for physician supervision.
- Eliminates board determined staff qualifications.
- Requires that prescriptions may not be refilled for more than one year from the date the prescription was written.
- Renders licensed practical nurse application fees non-refundable (Registered nurse application fees have been non-refundable for several years)
- Eliminates the requirement that the Board of Medical examiners approves courses for the Board of Optometry
- Requires all fines imposed by a board be deposited in the State General Fund
- Allows physical therapists to use a patient's medication obtained in another state
- Exempts a person operating an X-Ray machine for industrial purposes from the licensure statute
- Exempts an individual providing consultative psychological services for ten days or less from the licensure statute and updates terms and titles used in the field of psychology
- Exempts a veterinarian licensed in another state to practice on an occasional case in Montana Board of Veterinarian Medicine
- Allows for the licensure of firearms instructors

- Eliminates the requirement that a resident manager or qualifying agent of a private security company use certified mail to notify the Board of changes
- Removes language in any board statute that describes, “forms prescribed by the board.” (The Department develops forms)